IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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ORDER

Laxman R. Pinjani
Vs.
RSRTC & Ors.

S.B. CIVIL WRIT PETITION NO.2588/2005 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 3rd ovember, 2006

PRESENT

REPORTABLE

HON'BLE JUSTICE SHRI MOHAMMAD RAFIQ

Mr.Harish Purohit, for the petitioner.
Mr.Santosh Choudary, for the respondents.

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BY THE COURT:

The petitioner has challenged the order dated 18th Nov., 2003 by which the respondents have denied to pay him any other emoluments except subsistence allowance already received by him.

The petitioner was initially appointed on the post of LDC in Public Works Department (B&R), Division-I, Ajmer on 8.9.1962. The petitioner was thereafter absorbed in the RSRTC in the year 1964. He was then promoted on the post Junior Accountant. A

criminal case against the petitioner on 25.4.1979 under the provisions of Prevention of Corruption Act was registered while he was working at Sri Ganganagar Depot. He therefore was placed under suspension and a charge-sheet was also issued to him. Subsequently however the charge-sheet was withdrawn by the respondent-corporation. The Anti Corruption Bureau, Bikaner filed challan against him in the trial court. The petitioner thereafter faced trial. After completion of trial, the trial court convicted the petitioner for the charges levelled against him. Aggrieved by the judgment of the trial court, the petitioner preferred an appeal before this Court being S.B.Cr. Appeal No.332/1984 and the same was eventually allowed by this Court vide judgment dated 18.2.2000 and the order of conviction and sentence was set aside. However,when the petitioner made representation to the respondents for demanding the amount of full salary and other allowance as per Rule 54(2) of the RSRTC Karmchari Sewa Niyam, 1965, the respondents by their order dated 18.11.2003, referred to supra, declined such benefits. It was mentioned in the impugned order that the petitioner while working at the Ganganagar Depot was caught red handed by the raiding party of Anti Corruption Department while accepting illegal gratification and therefore, he was suspended vide order dated 25.4.1979. The charge-sheet was also issued to him on 8.8.1988 Pending inquiry, however he was reinstated in service

on 6.9.1989. Subsequently, the charge-sheet was withdrawn vide order dated 19.6.2001. For all these reasons, it was not considered proper to pay him full salary and allowances for the period of suspension.

I have heard Shri Harish Purohit, learned counsel for the petitioner as well as Shri Santosh Choudary, learned counsel fo the respondents and perused the record.

Shri Harish Purohit, learned counsel for the petitioner has argued that since the petitioner has been acquitted of all the charges in the criminal case and the charge-sheet which was issued by the respondents was also withdrawn by them and there was no reason for not granting him full salary and other allowances. Only reason for placing the petitioner under suspension was the criminal case registered against him at the instance of Anti Corruption Bureau and when the charge against the petitioner has not been proved, the foundation thereof has now been rendered non-existent. Payment of entire emoluments therefore cannot be now denied to the petitioner. It has therefore been prayed that the writ petition may be allowed.

On the other hand, learned counsel for the respondent argued that according to Rules 54(2) of the Rajasthan Service

Rules, which have been adopted by the respondents, it is the discretion of the authority whether or not to give full salary or other benefits during the period of suspension. In the present case, the allegation against the petitioner was that he was illegally accepting illegal gratification from a junior employee and was caught red handed by the Anti Corruption Bureau. The charge-sheet against the petitioner was withdrawn because he was facing criminal trial and since the trial was likely to take long time and he was reinstated in service. The petitioner was originally convicted by the trial court, but later he was acquitted by this Court vide its judgment dated 18.2.2000, in which he was given benefit of doubt. This was therefore not an honourable acquittal. Learned counsel for the respondents argued that the petitioner has already attained the age of superannuation on 31.8.1998 and the order of acquittal was passed much thereafter on 18.2.2000 and therefore they could not reopen the inquiry against the petitioner. He therefore, prayed that the writ petition may be dismissed.

I have given my thoughtful consideration to the arguments advanced by learned counsel for the parties and perused the record.

In the present case, the petitioner was initially placed

under suspension only because he was caught red handed while accepting illegal gratification from a junior employee. The respondents also served charge-sheet upon him. There were several circulars of the Government, some of which have been placed on record in this case such as Circular of DOP dated 1st Sept., 1997 and circular of Director, Anti Corruption Department dated 25th March, 1988, which provides that when on the similar charges the delinquent is facing trial, the departmental inquiry may not be held or suspended till the final conclusion of the inquiry and the employee may be reinstated because the trial may take a long time. It was therefore that the respondents decided to withdraw the charge-sheet. The petitioner was convicted by the trial court vide its judgment dated 14.9.1984. The petitioner filed appeal against the said judgment and in the appeal, this Court after considering the evidence on record, acquitted the petitioner by giving him benefit of doubt. In the meantime however the petitioner having attained the age of superannuation retired on 31.8.1998. In this manner, the suspension of the petitioner made on 25th April, 1979 actually came to an end when he was reinstated in service on 6th Sept., 1985. It is only after he was acquitted by this Court that the petitioner made representation demanding entire pay and allowance of the period of suspension starting from 25th July, 1979 till he was reinstated in service on 6th Sept., 1989.

The petitioner was placed under suspension only because of his own conduct in involving himself in a criminal case and that was the reason he had to face the prosecution and had to remained under suspension. His suspension was in fact not related to the subsequent issuance of charge-sheet and its later withdrawal because the charge-sheet was issued to him much after his being placed under suspension. He was convicted by the trial court on 14th Sept., 1984 yet the respondents did not take any steps to remove him from service although they could, if they wanted, remove him from service on the ground of misconduct solely on the ground of his conduct which led to conviction. The respondents however reinstated him in service by order dated 6th Sept., 1985. In the meantime criminal appeal filed by the petitioner way back in the year 1984 was allowed by this Court on 18.2.2000 in which he was acquitted by giving him benefit of doubt. It was therefore not a case of honourable acquittal. In order to appreciate the controversy in its true perspective, it would be appropriate to reproduce Rule 54 of the R.S.R. which is as under: -

> "**54. Re-instatement.-**(1) When a Government servant who has been dismissed, removed, compulsorily retired or suspended is re-instated or would have been re-instated but for his retirement on superannuation while under suspension, the

authority competent to order the re-instatement shall consider and make a specific order:-

(a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty or for the period of suspension ending with the date of his retirement on superannuation as the case may be; and

(b) whether or not the said period shall be treated as a period spend on duty.

(2) Whether such competent authority holds that the Government Servant has been fully exonerated or, in the case of suspension that it was wholly unjustified, the Government servant shall be given the full pay and dearness allowance to which he would have been entitled has he not been dismissed, removed or compulsorily retired as a penalty or suspended, as the case may be.

(3) In other cases,the Government servant shall be given such promotion of such pay and dearness allowance as such competent authority may prescribe.

(4) In a case falling under clause (2) the period of absence from duty shall be treated as a period spent on duty for all purposes.

(5) In a case falling under clause (3) the period of absence from duty shall not be treated as a period on duty unless such authority specifically directs that it shall be so treated for any specified purpose.

Note:- The order of the competent authority regarding the treatment of the period of absence from duty passed under this proviso is absolute and no higher sanction would be necessary for the grant of extra-ordinary leave in excess of three months in so far as temporary Government servant are concerned.

Provided that if the government so desires, such authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the Government servant.

> (6) In case where punishment order does not indicate as to whether the suspension period is to be counted for the purpose of pension or not the period of suspension shall be counted for the purpose of pension. In all other cases, action shall be taken as per punishment order.
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> (7) Any payment made uner this rule to a Government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment, business, profession or vocation during the period between the date of removal, dismissal or compulsory retirement, as the case may be, and the date of reinstatement. Where the emoluments admissible under this rule are equal to or less than the amounts earned during the employment, business, profession or vocation elsewhere, nothing shall be paid to Government servant.
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> For Administrative Instruction Issued by the Government See appendix I, Section II, Suspension during Pendency Criminal Proceeding of Arrest for Debts or During Detention Under a Law Providing for Prevention Detention."

If the provisions of Rule 54 of RSR are considered in the light of the facts of the present case, it would become evident that the said rule has given a discretion to the competent authority to decide and pass specific order with regard to pay and allowance to be paid to the Government servant for the period of his suspension and whether or not the said period shall be treated as period spent on duty. It therefore logically follows that the rule has also given a discretion to the authority to decide not to give any such benefits to the employees concerned

for valid reasons.

What has to be decided in the present case is whether the reason assigned by the competent authority in the impugned order for not making payment of full salary and allowances for the period of suspension are valid and relevant reasons and if so whether such reasons justify the decision of the authority to deny to the petitioner such benefits. The competent authority in the impugned order has maintained that allegations against the petitioner was that he was involved in a trap case and caught read handed while accepting illegal gratification from a fellow employee and in view of the nature of the charges and the facts of the case, the petitioner would not be granted the aforesaid benefits.

Refusal of back wages to an employee by the employer on account of his absence of duty due to his involvement in a criminal case even though at subsequent point of time he was acquitted was a subject matter of examination by the Hon'ble Supreme court in Ranchhodiji Chaturji Thakore Vs. Superintendent Engineer, Gujarat Electricity Board, AIR 1997 SC 1802 = (1996) 11 SSS 603. Although that was a case where the question directly in issue was with regard to back wages, but back wages would also include the amount of difference between

salary and allowance minus subsistence allowance and therefore this decision should also apply to the facts of the present case. The Hon'ble Supreme Court in the said case observed as under:-

> "The only question is : whether he is entitled to back wages? It was his conduct of involving himself in the crime that was taken into account for his not being in service of the respondent. Consequent upon his acquittal, he is entitled to reinstatement for the reason that his service was terminated n the basis of the conviction by operation of proviso to the statutory rules applicable to the situation. The question of back wages would be considered only if the respondents have taken action by way of disciplinary proceedings and the action was found to be unsustainable in law and he was unlawfully prevented from discharging the duties. In that context, his conduct becomes relevant. Each case requires to be considered in his own backdrops. In this case, since the petitioner had involved himself in a crime, though he was later acquitted, he had disabled himself from rendering the service on account of conviction and incarceration in jail. Under these circumstances, the petitioner is not entitled to payment of back wages (emphasis supplied).

Elaborating the same point, the Hon'ble Supreme Court in Union of India Vs. Jaipal Singh, AIR 2004 SC 1005 = (2004) 1 SCC 121, held as under: -

> "If prosecution which ultimately resulted in acquittal of the person concerned was at the behest or by department itself, perhaps different considerations may arise. On the other hand, if as a citizen the employee or a public servant got involved in a criminal case and if after initial conviction by the trial court,he gets acquittal on appeal subsequently, the department cannot in any manner be found fault

> which for having kept him out of service,since th law obliges, a person convicted of an offence to be so kept out and not to be retained in service.....
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> The appellants are well within their rights to deny backwages to the respondent for the period he was not in service. The appellants cannot be made liable to pay for the period for which they could not avail of the services of the respondent. The High Court, in our view, committed a grave error, in allowing backwages also, without adverting to all such relevant aspects and considerations. (emphasis supplied).

A somewhat similar controversy came up before Division Bench of this Court in Hindustan Zinc Ltd., Udaipur Vs. Radhey Lal(D.B. Civil Special (W) No.553/2004, decided on 15.9.2006). In that case,the employee was suspended in connection with criminal case for offence under Section 307 and 302 IPC. The trial court convicted him for the offence under Section 302 IPC and awarded sentence to him RI for five years by judgment dated 23.8.1989. Although initially he was only placed under suspension but later on he was removed from service. In appeal however he was acquitted by this Court. On his representation, the employee was reinstated in service on 14.8.1991. He thereafter made representation to the employer for grant of arrears of salary from the date of his suspension till his reinstatement. The Single Judge of this Court relying upon the Standing orders of of M/s. Hindustan Zinc Ltd. upheld the claim

of the respondent with the direction to treat entire period of his absence in connection with the criminal case as spent on duty and pay him emoluments including consequential benefits as stated at the outset. While allowing the appeal of M/s. Hindustan Zinc Ltd., the Division Bench held that the appellant did not earn clean acquittal nor the court disbelieved the prosecution case. In the facts and circumstances of the case, he was held to have exercised right to private defence and given benefit of doubt. The court held that the circumstances in which the employee did not perform duty not being attributable to the management, there being no order of the management placing the respondent under suspension and thereby preventing him from performing duties, the management cannot be saddled with the burden of salary for the period during which he did not work and for which the appellants cannot be blamed.

In the instant case, however it should be clear from the fact that even though the petitioner has been convicted by the trial court yet the respondents continued him in their employment and did not remove him and he has received the subsistence allowance for the entire period of suspension. The refusal of the respondents to give him amount of difference between pay and subsistence allowance by reason of his involvement in a trap case where in he was caught red handed

while accepting illegal gratification from a fellow employee in which he was acquitted by giving him benefit of doubt was a valid and relevant consideration for refusing to grant him such benefits.

The orders of suspension can be categorized in two classes. While first class can be of the class where employees are placed under suspension on account of initiation/contemplation of disciplinary proceedings whereas the other category can be of those who are suspended on account of their involvement in some criminal case leading to their eventual prosecution. So far as suspension orders belonging to first category are concerned, the incumbent can have legitimate claim for payment of difference of pay and subsistence allowance if the disciplinary proceedings initiated against him has ultimately resulted in his complete exoneration. The suspensions pertaining to second category case, however are resulted on account of conduct of the employee in involving himself in the crime, which is in no way related to his working in the department and the prosecution if eventually results in his acquittal either by the trial court or in the appeal, by the appellate court on the ground of benefit of doubt, the employer should certainly have the discretion to decide whether or not to grant to such employee payment of difference of the amount of

pay and subsistence allowance and in doing so, the nature of charges/allegations against the employee shall be a relevant factor.

In view of the aforesaid discussion, I do not find any merit in the writ petition and the same is therefore dismissed with no order as to costs.

(MOHAMMAD RAFIQ),J.

c.p.goyal/-